

SERVED: February 9, 1994

NTSB Order No. EA-4079

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 3rd day of February, 1994

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-11708
v.)	
)	
PHILEMON K. PLATT,)	
)	
Respondent.)	
)	

ORDER DENYING RECONSIDERATION

Respondent has petitioned for reconsideration of our opinion and order in EA-4012, affirming the law judge's imposition of a 90-day suspension of respondent's pilot certificate based on respondent's operation of four flights for compensation or hire when he did not hold the requisite operating certificate under 14 C.F.R. Part 135. Specifically, respondent argues that a reduction in sanction is warranted in view of the law judge's findings that respondent's violations were inadvertent and that he was "making every effort to comply" with the regulations. Respondent also requests a three-day credit towards any suspension the Board upholds, in light of an earlier emergency action initiated (then canceled) by the Administrator based on the same alleged violations, which resulted in respondent's flying privileges being suspended for three days.

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The Administrator opposes any further¹ reduction in sanction, but does not object to giving respondent a three-day credit towards the 90-day suspension of his pilot certificate.

Upon review of respondent's petition, we cannot agree that a lesser sanction is warranted. We continue to believe, as we indicated in EA-4012, that a 90-day suspension of respondent's pilot certificate is appropriate under the circumstances of this case, and consistent with our precedent.² We note that the law judge's finding that respondent's violations were inadvertent and that he intended to comply with the regulations is not equivalent to a finding that respondent neither knew **nor should have known** that his flights were in violation of Part 135 (a circumstance that would have exonerated respondent³).

Regarding the three-day credit towards respondent's suspension, we do not believe any ruling from the Board on that point is required as the Administrator has expressed his willingness to credit respondent with the three days he has already served.

ACCORDINGLY IT IS ORDERED THAT,

Respondent's petition for reconsideration is denied.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above order.

¹ The Administrator had originally sought revocation but the law judge modified the sanction to a 90-day suspension.

² See e.g., Administrator v. Poirier, 5 NTSB 1928 (1987) (90-day suspension affirmed for one illegal flight); and Administrator v. Walton, NTSB Order No. EA-2747 (1988) (90-day suspension affirmed for two illegal flights).

³ We have declined to hold pilots responsible for violations of Part 135 when they neither knew nor should have known that the flights they operated were governed by Part 135. See Administrator v. Conahan, NTSB Order No. EA-4044 at 16, n. 23, and cases cited therein.